

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
PORTLAND STEVEDORING COMPANY,)
)
Appellant,)
)
v.)
)
PUGET SOUND AIR POLLUTION)
CONTROL AGENCY,)
)
Respondent.)

PCHB No. 77-158

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter the appeal of two \$250 civil penalties for dust emissions allegedly in violation of respondent's Sections 9.15(a) and 9.03(b) of Regulation I came on for hearing before the Pollution Control hearings Board, W. A. Gissberg (Chairman and presiding) and Dave J. Mooney, convened at Lacey, Washington on December 19, 1977. Respondent elected a formal hearing pursuant to RCW 43.21B.230.

Appellant appeared by and through its Vice-President, Captain Lyle Devenney. Respondent appeared by and through its attorney Keith D. McGoffin. Olympia court reporter Gene Barker provided

1 reporting services.

2 Witnesses were sworn and testified. Exhibits were examined.
3 From testimony heard and exhibits examined, the Pollution Control
4 Hearings Board makes these

5 FINDINGS OF FACT

6 I

7 Respondent, pursuant to RCW 43.21B.260, has filed with this
8 Hearings Board a certified copy of its Regulation 1 containing
9 respondents regulations and amendments thereto of which official
10 notice is taken.

11 II

12 Respondent contends that appellant violated both Section 9.15(a)
13 and Section 9.03(b) of Regulation 1. The first of these standards,
14 Section 9.15(a), focuses on whether reasonable precautions were
15 taken to prevent airborne dust, regardless of opacity. The second of
16 these standards, Section 9.03(b), focuses solely on the opacity of
17 a dust emission, regardless of the precautions taken.

18 III

19 Appellant is a stevedoring company that loads and unloads vessels
20 at ports in Oregon and Washington. In this instance, appellant was
21 hired to load soybean meal from an elevator on Pier 86 of the Port
22 of Seattle onto the barge "THELMA COLLINS". The shiprent's destination
23 was Hawaii. Anticipating air pollution difficulties attendant to
24 loading the soybean meal, appellant's Vice President telephoned the
25 respondent and notified it of the proposed loading some four days
26 in advance.

1 Through previous studies at Pier 86, initiated by the respondent,
2 it has been determined that in loading grain there are two important
3 precautions which can be taken to reduce airborne dust. One is to
4 bury the elevator spout in the grain as it is being loaded. The
5 other is to rig tarps over the open hold of the vessel. The appellant,
6 the elevator owner and the Port of Seattle were each aware of
7 these grain loading precautions.

8 There is a difference, however, in the characteristics
9 of grain and meal which renders these precautions for grain
10 loading inappropriate when loading meal. While grain will
11 "well up" around a buried spout, the denser meal will only
12 plug the spout unless it is periodically withdrawn and cleared.

13 Tarps rigged over the vessel's hold will interfere with the
14 periodic withdrawal and clearing of the spout. Consequently,
15 on October 7, 1977, appellant loaded the soybean meal without
16 the use of available tarps and withdrew the buried spout periodically,
17 to clean it. A cloud of airborne dust was caused by this procedure.

18 Soybean meal bound for Hawaii is usually loaded at the Port
19 of Tacoma where a large plastic hood is erected over the vessel
20 being loaded and where fans remove the meal dust as it becomes
21 trapped under the hood. This is the first time known to
22 appellant that soybean meal has been loaded at Pier 86 of the Port
23 of Seattle.

24 At 2:00 p.m. of the day that appellant loaded the soybean
25 meal, respondent's inspector served a Notice of Violation to
26 appellant on the work site. Appellant subsequently received a

27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 Notice and Order of Civil Penalty, No. 3540, citing Section 9.15(a)
2 of respondent's Regulation I and imposing a civil penalty of
3 \$250.

4 IV

5 After receiving the above Notice of Violation the appellant
6 continued to load soybean meal. Consequently, the appellant
7 continued to cause a dust cloud. At approximately 3:40 p.m. that
8 same day, appellant caused a dust cloud which, at its densest point
9 was from 30-100% opacity and continued at that opacity for at
10 least six consecutive minutes. The dust was observed by
11 respondent's inspector who issued another Notice of Violation
12 on the work site. Appellant subsequently received a Notice and
13 Order of Civil Penalty, No. 3539, citing Section 9.03(b) of
14 respondent's Regulation I and imposing a civil penalty of
15 \$250.

16 Appellant appeals these civil penalties.

17 V

18 Appellant had been issued a prior \$250 civil penalty for violation
19 of Section 9.03(b) of respondent's Regulation I on July 22, 1977.
20 That section is the same as one that is alleged in this appeal.

21 VI

22 Any Conclusion of Law hereinafter stated which is deemed
23 to be a Finding of Fact is hereby adopted as such.

24 From these Findings the Pollution Control Hearings Board
25 comes to these

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW
AND ORDER

CONCLUSIONS OF LAW

I

Section 9.15(a) of respondent's Regulation I states:

It shall be unlawful for any person to cause or permit particulate matter to be handled, transported or stored without taking reasonable precautions to prevent the particulate matter from becoming airborne.

. . . .

Airborne dust is "particulate matter" in that it is solid at standard conditions, Section 1.07(w) of Regulation I.

Appellant took reasonable precautions to prevent dust from becoming airborne. The precautions of burying the spout continuously and rigging tarps are inappropriate to the loading of meal as opposed to grain, although appellant buried the spout as much as was consistent with keeping it free flowing.

Where, as here, there is one isolated instance of loading meal, it is not reasonable to expect that the stevedore alone will take the precaution of building a hood and fan arrangement such as is used to suppress meal dust at the Port of Tacoma. However, such precautions may be reasonable where meal loading at Seattle Pier 86 is more than an isolated event and where the elevator and pier owners are parties with the stevedore. We hold only that on the particular facts of this case, the precautions taken by appellant were reasonable.

II

Section 9.03(b) of respondent's Regulation I states:

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

1
2 After July 1, 1975, it shall be unlawful
3 for any person to cause or allow the
4 emission of any air contaminant for a
5 period or periods aggregating more than
6 three (3) minutes in any one hour,
7 which is:

8 (1) Darker in shade than that designated
9 as No. 1 (20% density) on the Ringelmann
10 Chart, as published by the United States
11 Bureau of Mines; or

12 (2) Of such opacity as to obscure an
13 observer's view to a degree equal to or
14 greater than does smoke described in
15 Subsection 9.03(b)(1): provided that, 9.03
16 (b)(2) shall not apply to fuel burning
17 equipment utilizing wood residue when the
18 particulate emission from such equipment is
19 not greater than 0.05 grain per standard
20 cubic foot.

21

22 Dust is an "air contaminant", Section 1.07(b) of Regulation I
23 and RCW 70.94.030(1). By causing an emission of dust of an
24 opacity obscuring an observer's view to a degree equal to or
25 greater than does smoke designated as No. 1 on the Ringelmann
26 Chart for a duration of more than three (3) minutes in any one
27 hour, appellant has violated Section 9.03(b) or respondent's
Regulation I. Dust emission in excess of this section constitutes
a violation without regard to the precautions taken.

20 IV

21 Any Finding of Fact which is deemed to be a Conclusion
22 of Law is hereby adopted as such.

23 From these Conclusions the Board issues this

24 ORDER

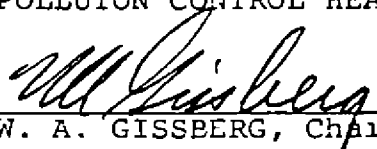
25 The \$250 civil penalty pertaining to the alleged violation of
26 Section 9.15(a) (No. 3540) is reversed.

27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 The \$250 civil penalty pertaining to the violation of
2 Section 9.03(b) (No. 3539) is affirmed.

3 DONE at Lacey, Washington this 23^d day of December, 1977.

4 POLLUTION CONTROL HEARINGS BOARD

5 
6 W. A. GISSBERG, Chairman

7 
8 DAVE J. MOONEY, Member

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26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW
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